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 and Third-Party Plaintiff Dexon Computer, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

CISCO SYSTEMS, INC., a Delaware
 corporation, and CISCO TECHNOLOGY,
 INC., a California corporation,

Plaintiff,

v.

DEXON COMPUTER, INC., a Minnesota
 corporation,

Defendant.

Case No. 3:20-cv-04926 CRB

**DECLARATION OF TIM ROUSH IN
 SUPPORT OF DEFENDANT DEXON
 COMPUTER, INC.'S OPPOSITION TO
 PLAINTIFFS' CISCO SYSTEMS, INC.
 AND CISCO TECHNOLOGY, INC.'S
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: June 30, 2023
 Time: 10:00 a.m.
 Crtrm.: Zoom

AND RELATED CROSS-ACTIONS

Hon. Charles R. Breyer,
 Presiding Judge

DECLARATION OF TIM ROUSH

I, Tim Roush, hereby declare as follows:

1. I am an Account Manager at Dexon Computer, Inc. (“Dexon”).

2. Dexon is a Minnesota corporation that was founded in 1992. I have worked there for almost 22 years.

3. Dexon has been selling computer networking products for over thirty years. As a reseller, Dexon is in no way involved in the manufacturing of the products it sells. Rather, it acts solely as a “middle-man” reseller. In that role, it strives to provide the highest quality and value products to its customers. To that end, Dexon sources its products from literally thousands of different reputable suppliers. As a result of Dexon’s dynamic supply chain – it routinely sells directly to Cisco’s licensed and authorized sellers when they are unable to source product for their clients in a timely fashion.

4. Contrary to Cisco’s efforts to portray Dexon as a “bad faith” or “intentional” counterfeiter, Dexon has never intentionally or knowingly sold a counterfeit product. It is well known in the industry that Cisco has a counterfeit problem due in part to its decision to manufacture its products overseas. Estimates place the percentage of counterfeit product in the marketplace at 10% and higher. Despite the fact Dexon is in no way responsible for Cisco’s counterfeit problem and the undisputed presence of counterfeit Cisco products in the marketplace, Dexon takes proactive steps to detect and prevent the sale of counterfeit products.

5. As just one example of Dexon’s ant counterfeiting efforts, one of the few pieces of guidance Cisco makes available for assisting in detecting counterfeit products is a listing of its various “Security Labels” over the years (including the use of holograms). A true and correct copy of such document is attached hereto as Exhibit A (It can also be found online at www.cisco.com/c/en/us/about/legal/brand-protection/identify-counterfeit-products.html.) Dexon carefully inspects all relevant Cisco packaging to ensure it is consistent with Cisco’s identified “Security Labels.”

6. By way of comparison, Dexon has never had any relevant counterfeit issues with any of the non-Cisco brands it sells. For example, Dexon also sells Meraki networking products (Meraki

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1 was recently acquired by Cisco.) It is my understanding Meraki products have historically been
 2 manufactured domestically. Dexon has never had any counterfeit issues with Meraki products.

3 7. Dexon was required to produce all of its procurement records, sales records and
 4 related customer communications for the past five (5) years in the Texas litigation. Despite
 5 possessing such documents since October 2022, Cisco has been unable to come forward with a
 6 single piece of evidence indicating Dexon has ever intentionally or knowingly sold a counterfeit
 7 product. At best, it relies on a 2017 “list serv” email sent from the United Network Equipment
 8 Dealers Association (“UNEDA”) to all of its members. UNEDA is an alliance of more than 300 of
 9 the top secondary market network equipment sellers. With little or no assistance from Cisco,
 10 UNEDA and its members work cooperatively to avoid being victimized by counterfeit products.
 11 The 2017 “list serv” email notified UNEDA members of a specific issue involving Cisco WS-2960X
 12 switches. Specifically, an “add on” circuit. The “list serv” email suggests that at least one or more
 13 of the product with the “add on” circuit may have been procured from an entity named “PRO
 14 Network LLC” with an address in New Jersey.

15 8. Cisco’s motion claims and implies that: i) Dexon purchased product from “PRO
 16 Network LLC” subsequent to the 2017 “list serv” email; ii) “PRO Network LLC” and its related
 17 entities were indicted in July 2022; and iii) therefore Dexon must be an intentional or bad faith
 18 counterfeiter.

19 9. Dexon receives numerous “list serv” emails from UNEDA on a daily basis.
 20 Assuming a Dexon employees accessed and read the 2017 email, the email in no way suggests “PRO
 21 Network LLC” is in any way responsible for the identified issue. To the extent the “add on” circuit
 22 issue evidenced counterfeit product, a plausible conclusion would be that “PRO Network LLC” had
 23 been victimized just like Cisco’s authorized sellers and partners are victimized by the presence of
 24 counterfeit product in the stream of commerce.

25 10. Despite the absence of any further notice or issues involving “PRO Network LLC,”
 26 Cisco points to Dexon’s limited purchase from a “Pro Network LLC” located in Florida (not New
 27 Jersey) roughly two years later in May 2019 as evidence of Dexon’s “intentional” or “knowing”
 28 counterfeit activity. *Cisco has not even alleged that the product purchased in May 2019 from the*

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1 *Florida company was counterfeit.* Cisco also points to an alleged subsequent purchase from a
 2 company called “smartnetworks” in April 2022. First, the product ordered by Dexon from
 3 “smartnetworks” was not the Cisco WS-2960X switch at issue in the 2017 “list serv” email. Rather,
 4 Dexon’s order was for a completely different model switch. Second, *Dexon cancelled the order*
 5 *and the product was never acquired.* A true and correct copy of the May 2019 and April 2022
 6 Dexon invoices are attached hereto as Exhibit B.

7 11. Based on a Department of Justice press release relating to the July 2022 indictment
 8 of PRO Network LLC and its various entities, it appears Cisco was aware of counterfeit activity
 9 involving PRO Network LLC as early as 2014 and had sent several cease and desist letters relating
 10 to such activities. Dexon is unaware of Cisco ever notifying the marketplace of: i) any risks
 11 associated with PRO Network LLC; or ii) PRO Network LLC’s apparent various entities. It appears
 12 Cisco took no action against PRO Network LLC in advance of the July 2022 indictment.

13 12. Considering Cisco’s own unwillingness or inability to take action against PRO
 14 Network LLC, it is patently unreasonable to expect Dexon to keep abreast of all suspect or potential
 15 counterfeit activity in the marketplace, including keeping track of all potentially related entities. It
 16 is even more unreasonable to expect Dexon to avoid purchasing a completely different product,
 17 from a different named entity, having a different address, based on a single trade association “list
 18 serve” email from five (5) years earlier.

19 13. Absent any assistance or information from Cisco, Dexon had in fact placed “PRO
 20 Network LLC” on its “DO NOT BUY LIST” prior to having any information or knowledge
 21 concerning the criminal investigation or the resulting July 2022 indictment.

22 14. Cisco also misleadingly relies on Dexon sales representatives’ isolated references to
 23 “clean” serial numbers. Cisco is misleadingly suggesting, without any explanation, that the
 24 references to “clean” serial numbers somehow means non-genuine or counterfeit serial numbers.
 25 This is false. As Cisco has acknowledged, every SMARTNet contract sold by Dexon was acquired
 26 directly from a Cisco partner at Cisco’s full reseller price. Contrary to Cisco’s attempts to suggest
 27 Dexon somehow “hid” such sales, invoices from Cisco’s own partners reveal and disclose Dexon’s
 28 identity.

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1 15. The reference to “clean” serial numbers merely means product for which no existing
 2 SMARTNet contract is currently attached, and the absence of other irregularities. As originally
 3 explained in Dexon’s counterclaims, when an end user purchases a SMARTNet contract “Cisco is
 4 supplied with the relevant product information, including the serial number. . and identity of the end
 5 user.” Accordingly, the SMARTNet contract is “linked” to a specific end user and product.

6 16. Dexon’s counterclaims further explained that Cisco routinely “sells multiple
 7 SMARTnet contracts on the same product covering the same time period” and also “alter[s] or
 8 change[s] serial numbers in order to approve and thereby receive payment for SMARTnet contracts
 9 relating to secondary market equipment. However, Cisco will also refuse SMARTNet contracts if
 10 the subject serial number remains associated with an existing SMARTNet contract.

11 17. Accordingly, the reference to “clean” serial numbers merely means a secondary
 12 market product not already associated with an existing or ongoing SMARTNet contract (For
 13 example, a genuine secondary market product for which the original end user did not obtain a
 14 SMARTNet contract.)

15 18. Cisco has also implied or suggested that Dexon’s purchase of product on eBay
 16 warrants an injunction because it believes certain sellers’ online titles are suspect. Cisco has failed
 17 to explain or disclose that its own partners sell Cisco product on eBay utilizing alternative
 18 titles/aliases. For example, Cisco partner BlueAlly sells product on eBay using the title “mcsd-at-
 19 home”. Attached hereto as Exhibit C is a true and correct copy of an eBay product listing from seller
 20 “mcsd-at-home”.

21 19. Cisco also suggests an injunction is warranted because Dexon Sales Representatives
 22 occasionally utilize a personal email address. Dexon employees do in fact occasionally utilize a
 23 non-Dexon or personal email address when working remotely.

24 20. Dexon has had a longstanding contentious relationship with Cisco. As detailed in
 25 Dexon’s counterclaims, this has included Cisco making false or misleading allegations concerning
 26 Dexon’s products in an effort to unfairly capture or steal Dexon’s sales. Cisco claims limited
 27 instances of Dexon employees advising customers not to voluntarily disclose Dexon’s involvement
 28 warrants an injunction. Dexon employees honestly advising its customers they should not

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1 voluntarily disclose Dexon's involvement in order to obtain fair and unbiased treatment from Cisco
2 does not warrant an injunction.

3 21. To the extent Cisco seeks an injunction preventing the sale of "counterfeit" product,
4 Dexon has never knowingly or intentionally sold a counterfeit product. In the event Cisco is
5 ultimately able to prove any products sold by Dexon were counterfeit, Dexon would merely be an
6 innocent victim of the fact such counterfeit products are in the stream of commerce through no fault
7 of Dexon. Cisco's own partners are likewise victimized by counterfeit products.

8 22. Dexon would be unable to avoid the risk of unknowingly and unintentionally
9 violating an injunction prohibiting the sale of counterfeit product in light of Cisco's pervasive and
10 known counterfeit problem.

11 I declare under penalty of perjury under the laws of the United States of America and the
12 State of California that to the best of my knowledge the foregoing statements are true and correct,
13 and that this declaration was executed on May 12, 2023.

14
15 /s/ Tim Roush
16 Tim Roush
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EXHIBIT A




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Identify Counterfeit and Pirated Products



Brand protection

Protect your infrastructure from threats and ensure top performance by using only genuine Cisco products.

Why Care?

Security Labels

Reporting

Contact Cisco ▾

Why should I care?



Buy genuine

Quality and authenticity should be your top consideration when buying products.



Sourcing unauthorized products

Products sourced from outside Cisco authorized channels may pass through many hands before they reach you.



Types of unauthorized products

Unauthorized products may include secondhand, third-party, or even stolen products.



Counterfeit products

Counterfeit products can contain components that have been tampered with, including illegal software. Counterfeit products may not perform to standards.



Counterfeit risks

Counterfeit products can cause serious risks to network quality, performance, safety, and reliability.

Cisco security labels

The following labels address Cisco product security using a multilayer approach, and support the identification of suspicious products.

Dates on security labels from new products purchased from Cisco authorized channels should correlate to the transaction date.



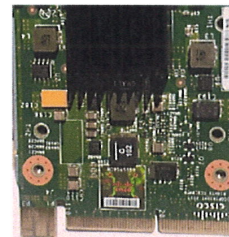
Carton security label

Carton security labels, often found overlapping the edge of the carton's white label.



Chassis security labels

Chassis labels are found on selective chassis products.



PCBA security label

Holographic and other security features are found on most line cards and modules' printed circuit board assemblies.



Module security label

Holographic security indicators are on most optical transceivers and highspeed cable assemblies.

Carton security label



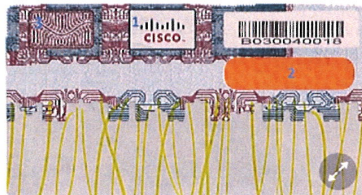
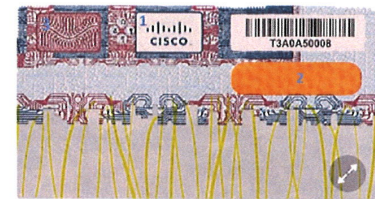
Mid-2020 to present

1. Look for a genuine hologram. Watch the video to see authentic features when tilted:
 - Stylized Cisco bridge logo visible between moon and arrow will shift color
 - Background color changes between moon and star images
 - Hour markers on the clock face vary in colors
2. Color shifting area varies from purple to green by changing the viewing angles
3. Reflective circular foil area reveals a bridge image when tilted



Mid-2018 to mid-2020

1. This version label differs from the prior version in part by:
 - A blue Cisco logo
 - Four random symbols to the left of the logo
2. Tilt the genuine label to see the embossed "CISCO" appearing in the orange area
3. Look for micro text "CISCO" present in the border of the wave sign

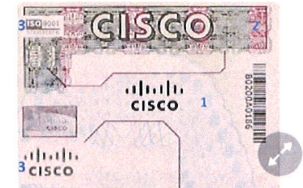


Mid-2016 to mid-2018

1. This version label has a blue and red Cisco logo
2. Tilt the genuine label to see the embossed "CISCO" appearing in the orange area
3. Look for micro text "CISCO" present in the border of the wave sign

Mid-2008 to mid-2016

1. This label version uses a black “Cisco” logo in the center of the label
2. Authentic label has a raised intaglio surface across the top of the same class used in currency
3. Genuine label has a Cisco logo and ISO 9001 mark made with silver foil with a reflective feature seen when tilted



Mid-2006 to mid-2008

1. This label version has the trademark logo “Cisco Systems” in the center
2. Authentic label has a raised intaglio surface across the top of the same class used in currency
3. Genuine label has a Cisco logo and ISO 9001 mark made with silver foil with a reflective feature seen when tilted

Chassis security labels



Certificate of Authenticity (COA) label is an identity label

Mid-2021 to present

1. Look for a genuine hologram. Watch the video to see authentic features when tilted
 - Stylized Cisco bridge logo visible between moon and arrow will shift color
 - Background color changes between moon and star images
 - Hour markers on the clock face vary in colors
2. Authentic label has a raised intaglio surface across the bottom of the label
3. Label serial number (example E019289431) is also printed in small font in the background





Chassis seal label is a tamper-evident label

Mid-2021 to present

1. Verify that this label has not been tampered or broken upon receiving new-in-box. When the label is broken, it is likely that the chassis has been opened
2. To see genuine holographic features, watch the video
3. Rotating an authentic label reveals a check mark and padlock symbols
4. Best viewing of the side dots with its corresponding numeric numbers is achieved with a single light source by tilting the label left to right and up and down



PCBA security label

Mid-2018 to present

1. To see genuine holographic features, watch the video
2. Rotating an authentic label reveals a checkmark and padlock symbols
3. Best viewing of the side dots with its corresponding numeric numbers is achieved with a single light source by tilting the label left to right and up and down

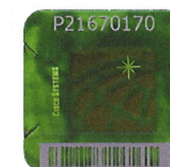


2009 to mid-2018

1. To see genuine holographic features, watch the video
2. Best viewing of the side dots is achieved with a single light source by tilting the label left to right and up and down

2006 to 2009

1. To see genuine holographic features, watch the video
2. Best viewing of the side dots is achieved with a single light source by tilting the label left to right and up and down
3. A bright pointed star is on the authentic holographic cube

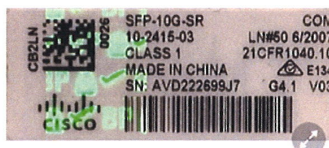
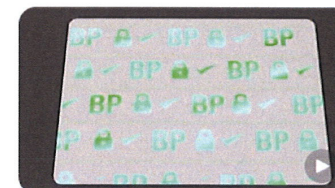


Module security label



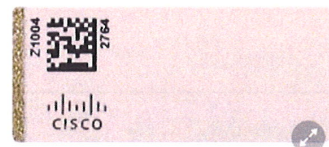
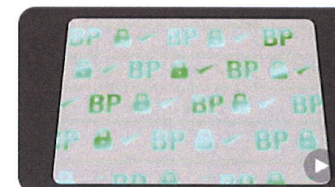
Mid-2021 to present

- Look for genuine hologram. Watch the video
- Tilt the genuine holographic label to see a padlock, check mark, and text "BP" at three different depth levels



Mid-2017 to mid-2021

- Look for genuine hologram. Watch the video
- Tilt the genuine holographic label to see a padlock, check mark, and text "BP" at three different depth levels



Mid-2010 to mid-2017

- To see genuine color shift feature, click on the video
- Tilt an authentic label to see color shifting bar changing between gold and green



Report counterfeit products

Share information on suspected counterfeit products

Cisco will use the information you provide solely and exclusively to investigate and take action against businesses selling counterfeit products.

[Report counterfeit](#)

The characteristics described on this page do not guarantee authenticity or legitimacy of procurement. While this page provides information that may help identify suspicious products, Cisco will need to analyze the product(s) to make an authenticity determination. Please contact [Brand Protection](#) if you have concerns that a product may be counterfeit.

The characteristics described on this page also do not validate whether a product has a valid software license. [Cisco's EULA](#) requires that, for the end user to have a valid license, the end user must have either (1) purchased the product through an Approved Source or (2) had the software on the Cisco product relicensed under the [Cisco Software Transfer and Re-Licensing Policy](#) unless an exception applies as described in the above-mentioned policy.

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Exhibit B

Dexon PO	
Date:	P.O. Number
5/22/2019	CT171886

*D00A17100



9201 East Bloomington Freeway Suite BB
 Minneapolis, MN 55420
 Tel: (952) 888-8922
 Fax: (952) 888-9136

Vendor #: 3486	Fax:
Pro Network LLC	
DO NOT BUY FROM THEM	
1701 NW 93rd Ave	
Doral	FL 33172-
Attn: Tony	
Email: tony@pronetworkus.com	

Ship To:
DEXON Computer, Inc.
9201 East Bloomington Fwy
Suite BB
Minneapolis MN 55420-3437
Attn: Clara Tousignant; PO# CT171886

Terms: PAY PAL Sales No: 100738 Buyer: Clara, Bauer Ship Via: Fedex Ground, 5 day service
 Memo:

Rack Mount Kits and Power cords must be supplied by the vendor (when appropriate).

Sale #	Part #	Description	Qty	CostEa	ExtCost	Comments
100738	WS-C2960X-48FPD-L	Cisco Catalyst 2960X-48FPD-L - Switch - managed - 48 x 10/100/1000 (PoE+ 740W) + 2 x 10 Gigabit SFP+ - desktop, rack-mountable - PoE+	16			

Total:

Please remit invoices to accountspayable@dexon.com

For Office Use Only

Date	Inv #	Frgh \$	Equip \$	Ttl \$	Ck Date	Ck #	Open Balance

Inventory PO	
Date:	P.O. Number
4/21/2022	DI192475

*DCA10217



9201 East Bloomington Freeway Suite BB
 Minneapolis, MN 55420
 Tel: (952) 888-8922
 Fax: (952) 888-9136

Vendor #: 3850 Fax:	
ebay - smartnetworks	
	NJ
Attn:	
EEmail: accountspayable@dexon.com	

Ship To:		
Dexon Computer Inc		
9201 E. Bloomington Freeway		
Suite BB		
Minneapolis	MN	55420-
Attn: Receiving, Department		

Terms: American Express Sales No: 99 Rep: Dexon, Inventory Ship Via: UPS Ground Service, 5 Day Gro

Memo:

Part	Qty	Description	Cost Ea	Extd Cost	UsedPart	Comment
WS-C3850-48F-S	-1	WS-C3850-48F-S			<input checked="" type="checkbox"/>	

Total:

Please remit invoices to accountspayable@dexon.com

For Office Use Only

Date	Inv #	Frgh \$	Equip \$	Ttl \$	Ck Date	Ck #	Open Balance

EXHIBIT C

People who viewed this item also viewed



MERAKI MS220-48 ENTERPRISE LICENSE AND SUPPORT 3 YEAR LIC-MS220-48-3YR

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99.3% positive feedback

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